**John Fennessey**
**09/26/2022**

1                    UNITED STATES DISTRICT COURT

2                  EASTERN DISTRICT OF MICHIGAN

3                        SOUTHERN DIVISION

4    MICHAEL OLIVER,

5              Plaintiff,

6        -vs-
                                    Case No. 20-cv-12711
7    DONALD BUSSA, In his           Hon. Laurie J. Michelson
     individual and official
8    capacity, and CITY OF
     DETROIT, Jointly and
9    Severally,

10            Defendants.

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               The Deposition of JOHN FENNESSEY,

13   taken before me, Theresa L. Roberts, Certified Shorthand

14   Reporter (CSR-4870) and Notary Public for the County of

15   Oakland (acting in the County of Wayne), at 2 Woodward

16   Avenue, Suite 500, Detroit, Michigan, on Monday,

17   September 26, 2022, noticed for 10 o'clock A.M.

18   APPEARANCES:

19   For the Plaintiff:    ROBINSON & ASSOCIATES, P.C.
                           By:  David A. Robinson, Esq. (P38754)
20                         28145 Greenfield Road, Suite 100
                           Southfield, Michigan  48076
21                         (248) 423-7234
                           davidrobinsonlaw@gmail.com
22
     For the Defendants:   CITY OF DETROIT LAW DEPARTMENT
23                         By:  Patrick Cunningham, Esq. (P67643)
                           2 Woodward Avenue, Suite 500
24                         Detroit, Michigan  48226
                           (313) 237-5032
25

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 1                      I   N   D   E   X

 2                                                        PAGE

 3   Cross Examination by Mr. Robinson                      3

 4

 5

 6                  E   X   H   I   B   I   T   S

 7                          DESCRIPTION                   PAGE

 8   Deposition Exhibit No. 1   Deposition Notice           4

 9   Deposition Exhibit No. 2   Photo Line-up Images        24

10   Deposition Exhibit No. 3   Inquiry Images              24

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12                  (Exhibits attached)

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 1                    Detroit, Michigan

 2                    Monday, September 26, 2022

 3                    (At about 10:08 A.M.)

 4                         —      —      —

 5               J O H N   F E N N E S S E Y

 6          after having been first duly sworn to tell the

 7          truth, the whole truth and nothing but the truth,

 8          was examined and testified upon his oath as

 9          follows:

10                    MR. ROBINSON:  This deposition is taken

11          pursuant to notice and to be used for any and all

12          purposes under the rules that apply.

13                    CROSS-EXAMINATION

14     BY MR. ROBINSON:

15     Q.   Mr. Fennessey, did I pronounce your last name

16          correctly?

17     A.   Correct, John Fennessey.

18     Q.   And do you have a middle name?

19     A.   Francis.

20     Q.   You and I have met before?

21     A.   Yes.

22     Q.   On the Parnell case.

23     A.   I'm sorry.

24     Q.   On the Parnell case.

25     A.   Yes.
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1    Q.    Yeah.

2    A.    **And before that too going back a ways.**

3                         (Deposition Exhibit Number 1

4                         was marked for identification)

5    BY MR. ROBINSON:

6    Q.    All righty.  You have been designated by the City of

7          Detroit to answer certain questions specific to --

8          and I'm just going to read, as I marked Plaintiff's

9          Exhibit Number 1, duces tecum deposition notice.

10         "Pursuant to Federal Rules of Civil Procedure 30 and

11         34, deponent is directed to produce at the time of

12         his or her deposition a person designated by the

13         City of Detroit most knowledgeable in the

14         pre-investigation into the purchase of the facial

15         recognition software from DataWorks Plus along with

16         documents in support of their testimony as outlined

17         below."

18                         "A, produce any and all studies the

19         DPD/City of Detroit relied on to investigate the

20         utility and application of DataWorks' facial

21         recognition company and software specific to the

22         issue of misidentification of people of color prior

23         to the initial purchase and deployment of the

24         software.  B, any and all written directives and

25         policy manual provisions concerning any use and

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1    deployment of DataWorks Plus facial recognition

2    software as specified chronologically by the dates

3    of issuance of the directives and manual provisions

4    issued."

5            "C, any and all training material or

6    instructional material that was provided to Detroit

7    Police Department investigators apprising them of

8    the concerns of opponents in the use of facial

9    recognition as it relates its accuracy and

10   identifying persons of color."

11           "D, any and all emails, texts, letters

12   and any other communications between Detroit Police

13   Department/City of Detroit and DataWorks Plus or its

14   Senior Account Executive Randy Hall, that would

15   evidence information, consideration and concern in

16   regard to the accuracy in identifying persons of

17   color."

18           "E, any and all independent DPD research

19   into accuracy in identifying persons of color."

20           "F, any and all board of police

21   commissioner, transcripts of Tawana Petty or other

22   documents provided by her or her agents or other

23   advocates opposing the use of facial recognition in

24   the city of Detroit on the basis of the accuracy in

25   identifying persons of color."

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1          "G, please provide any written documents

2     or testimony demonstrating public comments the City

3     received before or just after adopting DataWorks'

4     technology."

5               Now I'm going to hand you this,

6     Mr. Fennessey, and ask whether or not you, number

7     one, were provided with that notice?

8               MR. CUNNINGHAM:  I'll just state for the

9     record, Dave, that Mr. Fennessey is here to speak to

10    letters B and E of the 30(b)(6) deposition.

11  BY MR. ROBINSON:

12  Q.   So can you answer my question, Mr. Fennessey?

13  A.   **So have I seen Exhibit 1?**

14  Q.   Yes.

15  A.   **Yes, sir, I have.**

16  Q.   Okay, all right.  Did you bring with you any of the

17       requested materials in Exhibit 1?

18  A.   **No, because I don't have any of the requested**

19       **materials.  Everything I had regarding the purchase**

20       **of it I've turned over to corporation counsel.**

21  Q.   Okay.  I'm sorry.  According to Mr. Cunningham

22       you're here only in a capacity to talk about B, any

23       and all written directives and policy manual

24       provisions concerning the use and deployment of

25       DataWorks Plus facial recognition software as

1          specified chronologically by the dates of issuance

2          of the directives --

3                    MR. CUNNINGHAM:  Dave, I'm going to stop

4          you before you finish that.  I meant A.  B was a

5          mistake, I meant A.  Produce any and all studies

6          DPD/City of Detroit relied on and E, independent DPD

7          research.

8                    MR. ROBINSON:  Okay.

9     BY MR. ROBINSON:

10    Q.   Okay, what did you bring with you with regard to A

11         and E?

12    A.   **May I see Exhibit 1, please?  As to paragraph A,**

13         **there were no -- there was no studies that the**

14         **Detroit Police Department relied on prior to the**

15         **purchase of -- or the RFP, you know this is**

16         **competitively bid.  RFP, request for product, you**

17         **know, it's kind of a purchasing term.  They did not**

18         **have it then.**

19    Q.   Okay.  Let's turn to E.

20    A.   **Okay, E, that's the one about any and all**

21         **independent DPD research.  I worked for the**

22         **Department of Innovation and Technology, the public**

23         **safety section, so I know -- I don't know of**

24         **anything that DPD did regarding looking into that**

25         **issue.**

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1    Q.    So, again, you're the designee pursuant to our

2          request for a person most knowledgeable on the

3          subject matter of A through G.  And for the record

4          Mr. Cunningham has indicated that you have been

5          produced in response to that request to give

6          testimony and to produce documentation in support of

7          **A.  And that is produce any and all studies the**

8          **DPD/City of Detroit relied on to investigate the**

9          **utility and application of DataWorks' facial**

10         **recognition company and software specific to the**

11         **issue of misidentification of people of color prior**

12         **to the initial purchase and employment of the**

13         **software.**

14                   **It is your testimony today that you are**

15         **unable to produce any documents or to give any**

16         **testimony specific to that request?**

17   A.    **No, I'm saying that there -- there were no studies**

18         **at that time that I'm aware of.**

19   Q.    Okay.  So -- and my question is you can't give

20         any testimony or produce any studies relative to the

21         request in A?

22   A.    **Correct.**

23   Q.    Is that correct?

24   A.    **Yes.**

25   Q.    And then E asks that you bring any and all

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1   independent Detroit Police Department research into

2   the accuracy in identifying persons of color.

3   Again, you are the designee for the City of Detroit

4   in order to produce materials and testimony in

5   support of paragraph E, and that is any and all

6   independent DPD research into the accuracy in

7   identifying persons of color.

8           It's your testimony today that you have

9   not any documents in support of any independent

10  research or you cannot provide any testimony as it

11  relates to the accuracy in identifying persons of

12  color independent to any research done by the

13  Detroit Police Department; is that correct?

14  A.   Yeah, I'm not aware of any investigation or anything

15  done by independent agencies for the Detroit Police

16  Department, and I don't have any documentation

17  related to -- I don't know if they did any, but I

18  don't have any documentation.

19  Q.   So Mr. Cunningham has indicated you're here to

20  provide support and elucidation for paragraphs A and

21  E, that isn't true, you can't provide any?

22  A.   For paragraph A, I was part of the RFP committee,

23  and at the time there were -- my understanding of,

24  you know, we rely on -- a lot of times you look at

25  -- like missed the standards and things like that.

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1    That was not something that were studies that were

2    available at the time.  So we didn't -- I know we

3    didn't look at any doc -- any studies, and I don't

4    think there were any studies at the time.

5    Q.    Studies on what?

6    A.    On the application of facial recognition to people

7    of color.

8    Q.    When you say that there weren't any studies, you

9    mean during your involvement you weren't presented

10   with any studies; you're not saying that there were

11   no universal studies out there, right?

12   A.    At the time of the purchase -- the request for --

13   RFP, request for product there, we did not have any

14   studies.

15   Q.    I'm trying to understand --

16   A.    And I don't believe there were any.  Like I know --

17   I'm almost positive NIST did not have anything.

18   Q.    Okay.  What is NIST?

19   A.    National Institute of Standards and Technology.

20   Q.    Okay.  And, again, you, independent of anybody else

21   that was involved in the RFP, did you do any

22   independent research on the issue of the accuracy or

23   inaccuracy of facial recognition identification as

24   it relates to persons of color?

25   A.    At the time of the purchase, no.

1    Q.    Is it your testimony to me today that universally at

2          the time, and I'll get into what time frame that it

3          was, that universally there was no information or

4          literature out there?

5    A.    **I can't speak to universally.  Just what I'm saying**

6          **is, you know, looking at the kind of the studies I**

7          **looked at, which was primarily the NIST, there was**

8          **nothing regarding that.**

9    Q.    Okay, all right.  And you're not saying there wasn't

10         anything out there; you're just saying what you were

11         exposed to in the limitations of what you were

12         exposed to, it did not address the inherent bias as

13         it relates to facial recognition and identifying

14         persons of color at the accuracy?

15   A.    **At the time of the -- at the time purchasing was**

16         **occurring, no, I was not aware of anything.**

17   Q.    Okay.  You know, it's like, you're an attorney too,

18         right?

19   A.    **I am.**

20   Q.    Lawyers.  Again, at the time of purchase -- when was

21         that?

22   A.    **I want to say it was 2016.  I think it was when**

23         **we --**

24   Q.    And who among the committee or the purchase

25         committee or whomever, other than yourself, was

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1        involved?

2   A.   I have to think back.  I believe it was Brad May,

3        who at the time was director of public safety IT and

4        cybersecurity and Nick Giaquinto who was a police

5        commander at the time.  And then they had somebody

6        from purchasing I can't recall, who was kind of

7        running the RFP from the purchasing perspective.

8   Q.   Okay.  And were there meetings held and discussions,

9        email exchanges, texts and so forth?

10  A.   Well, I'm sure there were.  I know we had product

11       demos where they -- the three companies bid.  One

12       was nonresponsive; that was Flyball, I think it was,

13       and then DataWorks Plus and ID Networks were the

14       companies that responded who did product

15       demonstrations for us.

16  Q.   Were there emails and text exchanges?

17  A.   Oh, I'm sure there were.

18  Q.   Okay.  Because I had asked for those to be produced

19       though.

20  A.   I'm not the keeper of records for emails.  Typically

21       that will go to the department of innovation and

22       technology.  They can do a comprehensive search

23       across everyone's email box to return those.

24  Q.   Okay.  So that wasn't done in this case, although

25       you were provided with that notice?

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1   A.    I do not know if it was found.  I don't have any

2         control over the email systems.

3   Q.    I understand that.  But you were provided with the

4         notice and the notice was directed to you to provide

5         those materials for this deposition.  Did you

6         address that with your lawyer, Mr. Cunningham?

7   A.    I believe he's a lawyer for the City.  I did not

8         address that with him.  Typically that is handled

9         through other channels within the Department of

10        Innovation and Technology.

11  Q.    Did Mr. Cunningham address it with you?

12              MR. CUNNINGHAM:  You don't have to answer

13        that question.

14              MR. ROBINSON:  Okay.  On the basis of

15        what?

16              MR. CUNNINGHAM:  Attorney/client

17        privilege.

18              MR. ROBINSON:  I just want it for the

19        record.

20  BY MR. ROBINSON:

21  Q.    Okay.  So as we speak today are you aware -- have

22        you been made aware that there are inherent biases

23        in facial recognition, and there have been studies

24        relative to the misidentification of people of color

25        and based on the algorithms that are created by the

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1        technicians, as it were, in these facial recognition

2        algorithm software systems?

3    A.   I have read that there is a -- I think depending on

4         how these systems are trained, there may be a lower

5         accuracy rate of identification.

6    Q.   Of people of color?

7    A.   Correct.

8    Q.   Okay, when did you learn that?

9    A.   Oh, I can't recall.  I know --

10   Q.   Was it before 2016 or after?

11   A.   Well after that. Once again, you know, I like NIST

12        standards.  They have the facial recognition vendor

13        test, I think it's FRVT, and I don't recall them

14        addressing that until some time after 2016.  I don't

15        believe that became a factor until 2017, '18.

16   Q.   Okay.

17   A.   But you'd have to go back through their reports.

18   Q.   Okay.  Subsequent to, let's say, 2016 to the

19        present, to your knowledge has there been any

20        consideration by the Detroit Police Department in

21        its use of facial recognition processes in arrestees

22        or suspects of color given for what is in the

23        industry some understanding that there are

24        shortcomings in the system as it relates to

25        accurately identifying persons of color?

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1    A.    I'm not familiar with what DPD has done for their

2          internal processes and standards.

3    Q.    So to your knowledge no consideration -- to your

4          knowledge no consideration has been adopted as a

5          consequence of what now is an understanding?

6    A.    Not that I'm aware of.

7    Q.    Okay.  And what is your position today with the

8          Detroit Police Department?

9    A.    I work for the Department of Innovation and

10         Technology.

11   Q.    Okay.

12   A.    And so I'm a manager.

13   Q.    The Department of Innovation and Technology?

14   A.    Yes, sir.

15   Q.    And that department falls under whose auspices?

16   A.    The chief information officer.

17   Q.    And the chief information officer works for whom?

18   A.    The mayor.

19   Q.    And that's still a part of the City of Detroit?

20   A.    Correct.

21   Q.    And you're subject to interacting with the Detroit

22         Police Department specifically in your role as the

23         innovation and technology individual?

24   A.    The Detroit Police Department, the Detroit Fire

25         Department, EMS, Emergency Medical Services and

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1       Homeland Security.

2   Q.   And you have no knowledge of the arrest of
3        Michael Oliver, correct?

4   A.   Correct.

5   Q.   Or of Robert Williams, correct?

6   A.   Correct.

7   Q.   Did any of your activity as it relates to the RFP
8        for facial recognition software from DataWorks Plus
9        include any consideration that the software and the
10       facial recognition processes would be utilized in a
11       City that was 80 percent people of color?

12  A.   No.

13  Q.   Were you, in the processes of the RFP, made aware of
14       any of the groups of -- advocacy groups against the
15       implementation of facial recognition in the city of
16       Detroit based on the fact that these algorithms are
17       inherently bias, as it relates to the identification
18       of people of color?

19  A.   I was not aware of any advocacy groups opposed to
20       it, the facial recognition.

21  Q.   Did you attend any Board of Police Commissioner
22       meetings?

23  A.   Ever?

24  Q.   I apologize.  As it relates to this specific issue,
25       the RFP for facial recognition?

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 1   A.    Not that I recall.

 2   Q.    You ever heard of a person by the name Tawana Petty?

 3   A.    I have not.  Well, aside from you mentioned her name

 4         earlier.

 5   Q.    Right.  What is your understanding from your, NIST,

 6         N-I-S-T, right -- what is your understanding of how

 7         it is that there is this inherent bias as it relates

 8         to the identification of persons of color?

 9   A.    My understanding is based on what type of

10         photographs they use to train the system.  They got

11         to teach the algorithm.  And then if you give it a

12         broader sample which has a wider range of people

13         from different ethnic backgrounds, there's not --

14         there's no inaccuracy -- the inaccuracy rate

15         decreases.

16   Q.    Right.  And stated another way, the samples that are

17         used are of the majority population, white people

18         essentially?

19   A.    I can't -- I know the companies have adjusted once

20         this issue was raised, but I don't -- I can't tell

21         you exactly what they used originally.

22   Q.    So you don't have a basis to disagree with what I am

23         saying, right?

24   A.    You said a bunch of stuff.  What I can say is at one

25         point I know they had a higher inaccuracy rate for
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1               people of different ethic backgrounds.

2    Q.    Why?

3    A.    Whether it's --

4    Q.    How come?

5               MR. CUNNINGHAM:  Let him answer.  Go

6          ahead, John.

7               THE WITNESS:  Whether it's, you know,

8          Middle Eastern, African-American or, you know, some

9          other ethnic background.  Once the companies became

10         aware of that, my understanding is they started

11         using a broader pool of photographs to train the

12         systems.

13   BY MR. ROBINSON:

14   Q.    Okay.  So you're not disputing the fact that prior

15         to what it is that you're alluding to, the

16         population of samples were pretty much narrowed to

17         white people and the biogenetics, basically white

18         males, correct?

19              MR. CUNNINGHAM:  Object.  That's a

20         compound question.

21   BY MR. ROBINSON:

22   Q.    Correct?

23   A.    I don't think biogenetics applies to facial

24         recognition, but the -- I cannot tell you which --

25         you have an algorithm behind each facial recognition

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1              system.  I cannot tell you exactly what the

2              algorithms that were used by ID -- or DataWorks Plus

3              rather, I can't tell you how those were trained.

4              What I'm saying is generally in the industry, that's

5              my understanding of what's going on.

6     Q.     Okay.  So -- I'm sorry.

7     A.     Yeah.  Someone would have to go back and find out

8              what, I believe it was NEC which was the algorithm

9              company, how they trained the algorithm that was in

10             place at that time.  You know, I'm speaking

11             generally about what's been going on in the

12             industry.  I cannot tell you exactly what ID Net --

13             DataWorks Plus, the algorithm they used, how that

14             was trained.  I think that may be kind of the

15             question you're asking.

16    Q.     So between yourself, Nick Giaquinto and Brad, what's

17             Brad's last name?

18    A.     Brad May.

19    Q.     May?  This discussion was never had between the

20             three of you, this discussion of what goes into the

21             algorithms and to avoid, you know, the inaccuracies

22             of people of color?

23    A.     Correct.

24    Q.     Right.

25    A.     I do not recall discussing that.

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1   Q.   And did you have discussions with DataWorks Plus,

2        the group?  You would have, right?

3   A.   At the time of the purchase?

4   Q.   Yeah, right, you would have?

5   A.   Well, discussions or -- about the -- discussions

6        about some of --

7   Q.   Purchasing, purchasing, you had discussions -- you

8        would have had discussions with DataWorks Plus

9        regarding the purchase of facial recognition

10       software, right?

11  A.   As opposed to the lower -- because we're, I'm sorry,

12       the purchasing, yes, I spoke with them around

13       purchasing.  I don't recall ever speaking to anyone

14       from DataWorks Plus regarding having a less accurate

15       for, you know, minority populations or majority here

16       minority nationwide.

17  Q.   Okay.  So, and that no person from DataWorks Plus

18       that you spoke to raised this issue with you,

19       correct?

20  A.   Correct.  Of the issue of --

21  Q.   Yeah, correct.

22  A.   -- lower accuracy rates.

23  Q.   Lower accuracy rates.  And are you still involved in

24       any way in a relationship to contract renewals by

25       the City of Detroit for facial recognition software

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1      from DataWorks Plus?

2   A.     Yes.

3   Q.     Okay.  Since you came into the knowledge of NIST and

4      its appreciation for these inaccuracies that we're

5      talking about, have there been any discussions with

6      DataWorks Plus specific to any modifications in its

7      software -- its employment of their software in the

8      Detroit Police Department as it relates to this

9      specific issue of inaccuracies?

10   A.     I have not been part of any and I'm not aware of

11      any.

12   Q.     Okay, all right, all right, all right.  Now, as the

13      Department of Innovation and Technology, can you

14      give us a broad description of what your role is?

15   A.     Within the Department of Innovation and Technology

16      my current role is primarily working on writing RFIs

17      and working on some special projects.

18   Q.     What's an RFI?

19   A.     That's a request for information.  Either a request

20      for information or RFP where you're trying to

21      determine what's available in the marketplace.

22   Q.     Okay.  And based on your research you would make

23      recommendations for or against something?

24   A.     When I'm part of an RFP committee or RFI committee?

25   Q.     I don't know.

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1   A.      Yeah, I have been a voting member for selections of

2           different types of technology.

3   Q.      And if you were to come into information that would

4           say has the potential to be discriminatory as it

5           relates to citizens in the city of Detroit,

6           African-Americans and people of color, is that

7           something that should concern you and if you were to

8           make or not make a recommendation for purchase?

9   A.      When we're purchasing, we have standards that are

10          presented to us by the department of -- Office of

11          Contracting and Procurement, OCP.  And within those

12          parameters you always want to get the best product

13          for the City of Detroit.

14  Q.      And that is not an answer to my question.

15                  MR. ROBINSON:  Can you reread?

16                  (The pending question was

17                  read back by the reporter)

18                  THE WITNESS:  What I responded is, you

19          know, we have standards that are presented to us by

20          contracting procurement.  You know, I'm not going to

21          buy something that's going to be intentionally

22          discriminatory or recommend.  You know, I don't make

23          -- I'm not the only person making these decisions,

24          but that's -- I have not been confronted with that

25          question where someone -- you know, this product is,

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1         you know, de facto discriminatory against anybody

2         with any background.

3    BY MR. ROBINSON:

4    Q.    But it would be certainly information that would be

5          of concern to you if, in fact, you were to come into

6          that information?

7    A.    Yes.  You want to be fair but here we're talking

8          about a lower accuracy rate, not discriminatory.

9          So, you know, I -- like I said, I'm not going to --

10   Q.    Okay, you're opening up a can of worms on that one.

11         A lower accuracy rate but not discriminatory, how do

12         you reconcile that?

13   A.    One's more of a scientific thing.  You know, it's

14         just -- that's -- the readings I have done say that

15         the algorithms for many of the vendors, there's

16         probably like 100, 200 different vendors who make

17         facial recognition algorithms, and some are of

18         higher accuracy with different populations.

19   Q.    And again, only information that you gave

20         consideration to at the time of purchase in 2016

21         would have been the NIST information; is that

22         correct?

23   A.    No.  At the time -- because it's an RFP, a request

24         for product, OCP, Office of Contract and Procurement

25         has a grid on the factors that we consider and give

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1      -- award points.  That's how the decision was made

2      to go with the DataWorks Plus over ID networks.  I

3      can't recall what, you know, the Office of Contract

4      and Procurement probably still have the -- have the

5      grid, but it's just, you know, just doesn't -- price

6      is always a factor, quality, solution.  You know,

7      sometimes the factors are like the -- you know, the

8      background of the people who are working on the

9      project, things like that.  But that's how -- that's

10     how purchasing is done.  It's just, you know, here's

11     the factors you consider, award points and then they

12     add them up, and that's how the contracts are

13     awarded.

14                    MR. ROBINSON:  Mark these two for me.

15                    (Deposition Exhibit Number 2 and

16                    3 were marked for identification)

17     BY MR. ROBINSON:

18     Q.    Now, with regard to the images that may be used to

19           -- images that are submitted, let's say, to the

20           facial recognition system for the Detroit Police

21           Department, were there discussions that you had

22           concerning image quality?

23     A.    Do you mean the photographs, the probe photographs

24           or do you mean the templates that are being matched

25           against?

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1   Q.   Well, let's do this.  Explain the process to me?

2   A.   The way the Detroit Police Department facial

3        recognition system works is all mugshots are

4        processed and kind of -- you know, they're digital

5        photographs, but the algorithm runs against those

6        images and creates like a template.  And then you

7        will take a probe photograph like someone from a

8        crime scene from a -- the party store or someone

9        takes -- gets a picture of something that happens.

10                   You have that photograph is run against

11       the existing mugshot photographs.  And that -- what

12       the system will do is say, I have this probe

13       photograph which I digitized and ran the algorithm

14       against, and it looks for the closest match or

15       matches within the existing mugshot photographs.

16  Q.   So the probe photograph or the probe image, the

17       quality of the probe image in and of itself, what is

18       the ideal situation there?

19  A.   The higher resolution, the better.  I can't recall

20       the exact figures, but for facial recognition you

21       want to have a certain number of pixels.  It's the

22       instantaneous field of view where pixels on target

23       which is like the number of pixels that are made up

24       of -- I can't recall the exact numbers, but the

25       higher the better.

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1    Q.    When you increase an image, then that decreases the

2          pixelation?

3    A.    When you say increase, what do you mean?

4    Q.    I mean, when you blow something up.  You blow an

5          image up, don't you decrease the pixelation?

6    A.    The number of pixels are set at the time the image

7          is captured.  When you zoom in on a picture you're

8          seeing -- you're more likely to see pixelization,

9          which means you're seeing more individual pixels.

10         So it's not -- the zooming in doesn't pixelate it.

11         It's just you have an existing -- you have a picture

12         that's, let's say, 1080p which is kind of like a

13         standard pixelization.  If you zoom in on it you'll

14         see more pixels, but even the highest resolution

15         photographs, if you zoom in close enough you'll see

16         pixels.  That's just what pictures are made of -- or

17         digital pictures, rather.

18   Q.    When you increase the image don't you lose some of

19         the -- some of the -- something?

20   A.    No.

21   Q.    The image quality?

22   A.    No, the image is made up of pixels.  You have --

23         it's taken with a certain pixelization.  Like you

24         have 1080p, you've got 2k.  As you get more pixels

25         you can zoom in closer before you see or, you know,

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1    when you can get in close with the picture before

2    you see pixelization.  It's kind of whatever you

3    take is what you get and then --

4    Q.    So are you saying that if we were to blow this image

5          up here --

6    A.    I can't see it.

7    Q.    That image up here, to the size of that

8          eight-and-a-half by eleven page, you're saying you

9          wouldn't lose quality?

10   A.    Yeah, I'm looking at --

11   Q.    Plaintiff's Exhibit Number 3?

12   A.    -- Plaintiff's Exhibit 3.

13   Q.    And you're looking at the middle photograph in that

14         imagery.  Are you saying that if you were to blow

15         that let's say, inch-and-a-half by inch-and-a-half

16         photograph up to eight-and-a-half by eleven, the

17         size of that piece of paper, that you wouldn't lose

18         quality?

19   A.    What I'm saying is the picture would be the same,

20         but you're going to have -- you're -- because you're

21         blowing it up the pixels will be -- the individual

22         pixels will be larger, so more readily apparent.

23   Q.    Okay.  The image quality is going to change, yes or

24         no?

25   A.    No.

1   Q.    Okay.  What would change?

2   A.    **Because you're enlarging each individual pixels --**

3         **pixel, the pixels would be more readily apparent.**

4   Q.    Well would they be bigger?  Would they be, you know

5         -- would the focus be less or something?  It would

6         have to change.

7   A.    **No.  The focus, you know -- the focus of when the**

8         **picture was taken would be whatever the focus of the**

9         **camera was at that time.  Because you're expanding**

10        **the size of the picture, the individual pixels**

11        **become more readily apparent to you.**

12  Q.    So how does that change the image at all?  How does

13        that change the quality of the image of what you're

14        using.  You've got to -- I mean it's like, you know,

15        it's like I'm not smart like you, you know, I'm

16        struggling here, so you got to give it to me.

17                  MR. CUNNINGHAM:  Tell him what a pixel

18        is.

19                  **THE WITNESS:  A pixel is like -- when I**

20        **say 1080P, it's like 1080 --**

21  BY MR. ROBINSON:

22  Q.    Let's not be technical.  Let's just be real.  You

23        blow a photograph up, it changes, it changes the

24        quality?

25                  MR. CUNNINGHAM:  He's trying --

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1                    MR. ROBINSON:  Hold on.

2    BY MR. ROBINSON:

3    Q.    It changes something in the quality, the image.

4          What you see is different than what you originally

5          had, yes or no?

6    A.    No.

7    Q.    Okay.  It just makes it bigger.  Does it make it

8          bigger and better?

9    A.    An analogy, like a non-technical analogy.  It's like

10         when you get really close on a newspaper, you can

11         see the individual dots when you print something.

12         Monet's paintings are the same way.  You know, from

13         a distance I see, you know, we both been in the DIA,

14         I'm sure you know, you see the -- it's a river side.

15         You get up close and there's the individual dots and

16         it's exactly the same thing with a picture.  By --

17         you're not really enlarging -- you're making the

18         picture -- you're essentially getting -- by

19         expanding it like, let's say you had a picture and

20         you pasted it in a word document and you make it

21         bigger and the resolution decreases.

22                    You're just getting a -- you're seeing

23         more of the individual pixels.  Same image, it's

24         just you're changing how close you are to it, in

25         essence.

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1    Q.    You're changing something, right?

2    A.    Just the size.

3    Q.    Your testimony, right, your size, right, whatever.

4          Your testimony is that that image quality is the

5          exact same; that if you were to increase

6          one-and-a-half by one-and-a-half image in that

7          middle page in Plaintiff's Exhibit Number 3, the

8          eight-and-a-half by eleven and then you submitted

9          that eight-and-a-half by eleven as a probe image,

10         that's okay because it didn't change anything,

11         that's your testimony?

12   A.    No, that's like a different scenario.  If you took a

13         photograph, pasted it into a word document,

14         stretched it and saved that image and submitted it,

15         that's an entirely different image.

16   Q.    That's what I'm talking about.  That's exactly what

17         I'm talking about.

18   A.    Right, well that's -- with facial recognition you

19         want to have the best quality photograph.  I don't

20         believe that anyone at the Detroit Police Department

21         or anywhere is pasting a picture in a word document,

22         stretching it out, taking, saving that image and

23         then submitting it.

24   Q.    How do you know?

25   A.    Someone, somewhere could be thoughtless enough to do

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1    that, but I would be very surprised.

2    Q.   How about Mr. Dablitz?

3    A.   I don't know what his practices are.

4    Q.   Because he's given testimony that he blew up that
5         image?

6    A.   I'm looking at Exhibit 3, there's original image,
7         there's an inquiry image, and what I see was he
8         cropped that picture as opposed to made it bigger.

9    Q.   You're not going to dispute what Mr. Dablitz said in
10        his deposition, are you?

11   A.   I don't know what he said.

12   Q.   Okay.

13   A.   But looking at these images, there's the original
14        image which was a photograph -- looked like a
15        photograph from inside of a car.  Then a cropped
16        image which appears to be the same photograph.

17   Q.   It looks like part of the forehead is cropped off
18        too, right?

19   A.   No, it looks like the young man is fortunate enough
20        to still have all his hair, so I can't see where his
21        forehead is.

22   Q.   Do you see --

23   A.   Oh, yeah, you're right, you're right, that's the
24        car.

25   Q.   Right.  It's cut off, correct?

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1    A.    Yes, because the first image he's -- it looks like

2          it's taken inside of a vehicle and the upper portion

3          of the window cropped off the -- I can't tell if

4          it's his hairline or slightly below his hairline.

5    Q.    Okay.  And if you look at the ears, don't the top of

6          those ears kind of point out to you, on this image

7          in the middle, the top of the ears?

8    A.    The --

9    Q.    Kind of like your ears.

10   A.    -- yeah, the -- what I can tell you is he had his

11         head at an angle, and so you can see both of his

12         ears.

13   Q.    Don't the ears right at the top crop out like yours?

14   A.    Crop out or stick out?

15   Q.    Stick out, just like yours.

16   A.    I'd have to think about -- I'd have to -- I'm not

17         trying to be silly, but I'd have to look at my ears.

18         I've never really been that self-conscious.  But,

19         no, his -- I will be self-conscious in the future, I

20         will admit that.

21   Q.    Take a look.

22   A.    I will take my phone and reverse it.

23   Q.    So your ears crop out at the top?

24   A.    Stick out or crop out?

25   Q.    Whichever way you want to look at it.  They're not

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1      like tucked into your -- to the side of your head

2      just like his, right?

3    A.   I don't want to pick on this fellow, but I think his

4      ears stick out a little bit more, but his head's at

5      an angle.

6    Q.   How about these ears on this guy, do those ears crop

7      out?

8    A.   I'm looking at Exhibit --

9    Q.   2?

10   A.   -- 2, which appears to be a photo line-up.

11   Q.   And you're looking at the second row?

12   A.   I'm looking at -- this is a six-pack with six

13     photographs.  I would say number 5, which is a

14     head-on photo.

15   Q.   The ears look like they're tucked in more, right?

16   A.   I'm comparing a photograph where his head's at an

17     angle to a photograph where the head's straight

18     ahead.  So, I can't tell you.  The photos are not

19     the same.  They're dissimilar in the angles.

20   Q.   I'm just talking about the ears.

21   A.   Yeah, if you turn your head at an angle, your ears

22     are going to stick out more readily apparent than a

23     straight on photograph.

24   Q.   Mr. Fennessey, I'm looking at you right now, and if

25     you turn profile your ears would still stick out

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1    like that, okay.  And I'm not talking about your

2    ears, my ear lobes are funny, people tell me.

3    That's just human characteristics.  Those aren't the

4    biometrics that these algorithms are supposed to be,

5    you know, looking at, true, yes or no?

6  A.  **The facial recognition algorithms do not look at the**

7    **ears.**

8  Q.  By whom?

9  A.  **Biometric, biometric --**

10  Q.  That's not true, that's not true, they look at your

11    whole face.

12  A.  **Based on my understanding of facial recognition**

13    **algorithms is they do not look at yours ears.  Ears**

14    **are not biometrically certain identifier.  Biometric**

15    **identifiers are things like fingerprints, retinal**

16    **scans, DNA, where you're using someone's biometric**

17    **-- something that's fixed to identify somebody.  So**

18    **facial recognition, and I may be misusing the term.**

19    **I don't believe that's a biometric certain**

20    **identification.**

21  Q.  What about the human ability of just examining, just

22    observing?  I mean that's part of this whole thing

23    too, isn't it, to identify a person?  Because if the

24    ears are different, then that should clue you in to

25    maybe it's a different person, right?  Shouldn't

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1        that work -- are you saying that if you're talking

2        about facial recognition that you're supposed to

3        cancel out, you know, the human ability to call

4        distinctions between differences, yes or no?

5    A.  **Couple different things raised there.  One is like**

6        **people recognizing each other is one thing.  Facial**

7        **recognition technology, based on my understanding of**

8        **it, does not rely on ears.  Ears at one point were**

9        **relied on by and going back in my history here, some**

10       **French guy back in the 1800's thought you could use**

11       **ears to uniquely identify people.  But everyone**

12       **stopped using that by the 20th century,**

13       **19th century.**

14   Q.  You can go to facial recognition and I mean, and the

15       biometrics and so forth of ears.  My question went

16       to human, you know, propensity, the propensity to

17       examine two different pictures and make visual

18       comparisons based on, you know, the skills of what

19       our eyeballs afford us.  And when you look at those

20       two pictures, the ears are different regardless of

21       the angle as you tried to indicate.

22               MR. CUNNINGHAM:  That's not a question.

23               MR. ROBINSON:  And that's a question.

24               MR. CUNNINGHAM:  That is not a question.

25       It's a statement.

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1   BY MR. ROBINSON:

2   Q.      Isn't that true?

3   A.      No, when I looked at the inquiry image on Exhibit 3,

4           you have someone's head is at an angle in an upward

5           tilt.  When I look plaintiff's Exhibit Number 2,

6           image number five and the six-pack, you have someone

7           who's got a straight-on photograph where there's no

8           tilt or angle.

9   Q.      Would you allow me in this deposition to take your

10          photograph?

11  A.      I prefer you don't.

12                  MR. CUNNINGHAM:  Let's not do that, Dave.

13  BY MR. ROBINSON:

14  Q.      All right, but I want to see your ears, I want to

15          see how your ears are cropped out.  Will you allow

16          me to do that, Mr. Fennessey?

17                  MR. CUNNINGHAM:  No, no, his ears are not

18          in evidence in this case.

19                  MR. ROBINSON:  His testimony is.

20                  MR. CUNNINGHAM:  Yes, so ask him

21          questions.

22                  MR. ROBINSON:  I'm asking him questions,

23          would you allow me to do that, yes or no?

24                  MR. CUNNINGHAM:  No.

25                  THE WITNESS:  I prefer not to have my

1    **image taken.**

2              MR. ROBINSON:  All right.  I don't have

3    anything else.

4              MR. CUNNINGHAM:   I don't have any

5    questions.  E. trans.

6              MR. ROBINSON:  E trans.

7              (Deposition concluded about 11:01 A.M.)

8                    —      —      —

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1   CERTIFICATE OF NOTARY PUBLIC - COURT REPORTER

2                I do certify that the attached

3   deposition was taken before me in the above-entitled

4   matter; that the witness was first sworn to testify

5   the truth; that the testimony contained herein was

6   by me reduced to writing in the presence of the

7   witness by means of stenography, and afterwards

8   transcribed upon a computer.  The attached pages are

9   a true and complete transcript of the testimony and

10  proceedings.

11               I do further certify that I am not

12  connected by blood or marriage with any of the

13  parties, their attorneys or agents, and that I am

14  not an employee of either of them, nor interested,

15  directly or indirectly, in the matter of

16  controversy.

17               IN WITNESS WHEREOF, I have hereunto set

18  my hand and affixed my notarial seal at West

19  Bloomfield, Michigan, County of Oakland, this 8th

20  day of October 2022.

21

22  _____
    Theresa L. Roberts, CSR

23  Certified Shorthand Reporter - CSR-4870

24  Notary Public - Oakland County, MI

25  My commission expires 10-4-2027

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